



Civil Resolution Tribunal

Date Issued: December 19, 2018

File: SC-2018-000540

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *K.R. v. T.S.*, 2018 BCCRT 887

BETWEEN:

K.R.

APPLICANT

AND:

T.S.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The parties had been in a romantic relationship. The applicant, K.R., says the respondent, T.S., entered his apartment on 2 occasions on July 5 and August 28,

2017 and intentionally damaged his personal property. The applicant claims \$4,442.36 for damage to: a new TV (twice), a couch, a fish aquarium, dishes, and the apartment.

2. The respondent says that at the time, she was still living with the respondent and there was no unauthorized entry. To some extent, the respondent says things got broken while the applicant was assaulting her. Otherwise, the respondent says it would be unfair to grant the award sought as it would be further persecution, given past abuse.
3. The applicant is represented by a family member and the respondent is self-represented. I have anonymized the parties' with initials in this decision to protect their privacy, given the allegations of criminal conduct discussed below. Both parties asked that I anonymize and the published version of this decision reflects this in the style of cause.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the

circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondent owes the applicant the claimed \$4,442.36 for damage to the applicant's property.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and submissions below as necessary to explain my decision.
10. The evidence before me shows the parties had a violent relationship that lasted on and off for up to a year. There was a prior incident involving alleged assault, on March 14, 2017, the consequences of which are not before me in this dispute. I mention this at the outset given the respondent's emphasis on that prior incident, as discussed further below.

11. I also find that nothing turns on whether the parties lived together at the time of the July and August 2017 incident, though for context it appears the evidence suggests they did not live together in July, but had freshly reconciled before the August incident.
12. There is no suggestion that the respondent lived with the applicant more than 2 years, such that the *Family Law Act* might apply with respect to division of property. Further, this dispute is not about trespass nor is it about personal injury. Rather, this dispute is about intentional property damage.
13. The issue for me to decide is whether the respondent is liable for damage to the applicant's property, and if so, what is the value of the damage. I find that the applicant is entitled to the reasonable replacement cost value of any proven damage, if the damaged item cannot reasonably be repaired.
14. As referenced above, there is no question that the parties' relationship history was abusive. I acknowledge the respondent's submission that the parties' entire history should be considered for context. However, and I want to be clear that I am not insensitive to either party's position about this, determining respective fault for historical episodes of abuse is not before me for decision. As stated above, any damage or personal injuries that occurred during the March 2017 incident, and any resulting criminal charges or conviction, is not an issue in this dispute.
15. While the respondent mentions a restitution order payable by the applicant with respect to the March 2017 incident, I find that issue is part of the criminal process and not before me to consider. Put another way, the tribunal does not have the authority to enforce a court's restitution order. At the same time, nothing in that court process prevents the applicant from pursuing this civil claim for his property damage.
16. There is also no personal injury claim before me with respect to either the July or August 2017 incidents. There is also no counterclaim before me from the respondent for any injury or damages.

17. I turn then to the issue that is before me. In this dispute, the applicant says the respondent intentionally damaged his property. The applicant makes the following damage claims, totaling \$4,442.36:

- a. TV damage on July 5, 2017: \$1,327.18
- b. TV damage on August 28, 2017: \$1,548.93
- c. Aquarium replacement: \$407.25
- d. Couch, dishes, and tea infuser: \$350
- e. Loss of damage deposit: \$480
- f. Lock replacement by locksmith: \$189
- g. Cleaning of apartment, 8 hours at \$15/hour: \$120

18. I find the property at issue in this dispute belonged to the applicant. While the respondent says she co-purchased the sofa and perhaps the dishes, and bought the \$10 tea infuser, I find the weight of the evidence does not support this conclusion. The fact that the items remained in the applicant's apartment after the respondent moved out, without objection from the respondent in the evidence before me that includes police reports, is support for the conclusion that it was all his property. This conclusion is also supported by the applicant's parents' statements, although on these I place less weight as they are not neutral witnesses.

19. The respondent was criminally charged for her actions on July 5 and August 28, 2017. The charges were for unauthorized entry, assault with a weapon, and mischief.

20. The respondent pled guilty to mischief under \$5,000. It appears the other charges were stayed. The respondent's evidence of correspondence with her lawyer suggests her guilty plea was with respect to at least breaking the fish tank. However, I note the respondent provided an email from her criminal lawyer that "presumably" the applicant could seek restitution for the TV as well.

21. Again, contrary to the respondent's submission, nothing in that criminal process prevents the applicant from seeking compensation for the property damage through a civil proceeding. That is what the applicant has done by starting this tribunal dispute.
22. A criminal conviction is *prima facie* proof of the same facts in a civil proceeding, meaning it is proved unless the respondent proves the contrary (see *Pishka-Humphreys (Guardian ad litem of) v. Bolen*, 2012 BCSC 235). This flows from the fact that the burden of proof in a criminal proceeding is higher than in a civil process. By pleading guilty, the respondent admitted to the damage. This means the applicant has proved the respondent is liable for damage to at least his fish tank.
23. On balance, quite apart from the criminal guilty plea mentioned above, I find the evidence shows the respondent damaged the applicant's property as claimed, with the exception of the dishes and the claim about apartment damage. Again, the parties' abusive history is without question unfortunate. I acknowledge the respondent's evidence that she was being attacked. However, even on the respondent's own evidence, which includes an acknowledgement that at least some property damage was done out of "frustration", this would not reasonably explain the extensive property damage. On balance, I cannot find that the respondent damaged the property out of self-defence, on either July 5 or August 28, 2017. This is not consistent with the photos or the statements in evidence. I also note the police report statement that based on the applicant's audiotape of the July 5, 2017 altercation, the respondent was "clearly the aggressor".
24. I turn then to the various amounts claimed for the applicant's damages.
25. The TVs. I find that the respondent intentionally stabbed and scratched at the applicant's TV on July 5, 2017, with a fork. I find this is clear from the police report, photos, and is not particularly disputed by the respondent.

26. On August 28, 2017, I accept the respondent entered the applicant's home with his permission. However, it is undisputed the applicant's newly replaced TV was damaged on this date, and I find it was damaged, based on the weight of the evidence including a police report. The respondent says "perhaps if he hadn't thrown the tea infuser at me the damages to [his TV] would never have happened". I find that even if the applicant threw a tea infuser, this does not explain TV damage that shows something sharp hit it, with a scratch across the screen. I find this goes beyond the TV simply being hit by a thrown tea infuser. I am unable to find on the evidence that the respondent damaged the TV out of self-defence, to the extent the respondent suggests this is what happened. On balance, contrary to the respondent's submission, I find the respondent is responsible for the TV damage. Again, I find that the police report and photos in evidence support this conclusion.
27. The applicant provided a July 11, 2017 receipt for \$1,548.93, for his replacement of the TV irreparably damaged on July 5, 2017. I find this is reasonable and I order the respondent to reimburse the applicant this amount. The applicant's undated September 2017 receipt for the 2nd replacement TV appears to be for a slightly different model and cost \$1,738.25. There is no explanation before me about why a more expensive TV was reasonably required. I find the applicant is entitled to only \$1,548.93 for the 2nd TV replacement. Thus, the total award for the 2 TV replacements is \$3,097.86.
28. The aquarium. I find the respondent intentionally smashed the applicant's fish tank on July 5, 2017, killing his fish (though the applicant does not claim for the cost of replacement fish), which is essentially undisputed. As noted above, the applicant claims a replacement cost of \$407.25, acknowledging he does not have receipts for the original aquarium's purchase. The respondent says the applicant found the original aquarium in an alley and so she should not have to pay for an expensive replacement. In reply, the respondent submits the replacement was a 37 gallon aquarium whereas the original was 20 gallons. While I find the applicant is entitled to be compensated for having to obtain a replacement aquarium, there is no explanation for why a larger, brand new replacement aquarium was reasonably

necessary. On a judgment basis, I find the applicant is entitled to \$225 for a replacement aquarium.

29. The couch, dishes, and tea infuser. I further find the respondent purposely stabbed the applicant's couch with a fork, tearing a small hole in it. The police report and photos in evidence support this conclusion. The respondent says \$350 was the applicant's half-share towards the couch's purchase. She also says she bought the \$10 tea infuser. Further, the respondent says the dishes were in the dish rack which fell off the counter onto the floor, while the parties were arguing. The respondent says the applicant is therefore equally at fault for the damage to the dishes. The applicant did not provide a specific reply about how the dishes were broken. On balance, I accept that both parties are equally responsible for their breakage. The applicant also did not provide a break-down of the \$350, as between the couch, dishes, and tea infuser, and no receipts, invoices or quotes. Further, the applicant has not proved the sofa cannot be reasonably and inexpensively repaired, given that it was not new before the incident. On a judgment basis, I allow \$75 for this combined \$350 claim.
30. The damage deposit claim for \$480. The applicant claims damage to the apartment from the broken dishes and other objects thrown on the floor during the July and August 2017 incidents. The apartment is not new and I am unable to discern damage from the broken dishes as opposed to pre-existing scratches and wear that appear to exist throughout the apartment. Further, the applicant has not provided any evidence that the landlord retained the damage deposit or intends to do so, based on the damage from these incidents. I find that the applicant has therefore not proved this \$480 loss. I dismiss this claim.
31. The applicant claims \$120 for 8 hours of apartment cleaning, at \$15 per hour. The photos show the respondent's destruction of the aquarium left glass shards scattered over a wide area of the apartment. There was the dish breakage also. I accept the respondent is responsible for some cleaning costs. However, I find the

applicant has not proved he spent 8 hours or that \$15 per hour is appropriate. On a judgment basis, I allow \$75 for this claim.

32. The applicant claims \$189 for a locksmith bill, on the basis he needed to replace the locks so the respondent could not regain entry. Given the parties' history and the respondent's intentional damage on 2 occasions, I find this claim is reasonable and I allow it.
33. The applicant's total award is \$3,661.86: \$3,097.86 for 2 TVs, \$225 for the aquarium, \$75 for the couch, dishes, and tea infuser, \$75 for apartment cleaning, and \$189 for the locksmith bill.
34. The applicant is entitled to pre-judgment interest on the \$3,661.86 under the *Court Order Interest Act* (COIA), from July 17, 2017 for the 1st TV award of \$1,548.93 (\$24.79 in interest). The interest runs from September 1, 2017 for the remaining \$2,112.93, which is a date I consider reasonable in all of the circumstances (\$31.95). The total interest equals \$56.74.
35. In accordance with the Act and the tribunal's rules, as the applicant was substantially successful I find he is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

36. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$3,893.60, comprised of:
 - a. \$3,661.86 in damages,
 - b. \$56.74 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
37. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.

38. I order that the published version of this decision be anonymized to protect the parties' privacy, given the sensitive nature of the allegations at issue.
39. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
40. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair